IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17098 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

CHAUHAN BALUSINH NATHUSINH - Petitioner(s)
Versus
CHAUHAN SHIVUJI NATHUJI & 1 - Respondent(s)

==========

Appearance :
MR MA KHARADI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR JV JAPEE for Respondent(s) : 1 - 2.
SHRIKAR H BHATT for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/11/2006

ORAL JUDGMENT

1. The petitioner – original plaintiff has filed this petition under Article-227 of the Constitution of India praying for quashing and setting aside the order passed by the learned Assistant Judge, Sabarkantha at Himmatnagar in C.F.O No.31 of 2002 dated 1.4.2005 and thereby restoring the order passed below Ex.5 in Regular Civil Suit No.20 of 2002 passed by the learned Civil Judge (J.D.) Idar dated 16.9.2002.

2. The petition was admitted and rule was issued by this Court on 23.8.2005. This Court has granted ad-interim relief in terms of para-8(C) till further order, thereby the order passed by the learned Assistant Judge,

Sabarkantha at Himmatnagar in C.F.O. No.31 of 2002 was stayed.

3. Heard Mr.M.A.Kharadi, learned advocate appearing for the petitioner and Mr.J.V.Japee, learned advocate appearing for the respondents.

4. It is the case of the petitioner – original plaintiff that the land situated in Survey No.127 of village Sundarpur admeasuring 5 acre 29 guntha is of the ownership of the petitioner being an ancestral land. By way of partition amongst the co-sharers, the land in question came to the share of the petitioner and since 1987 the petitioner was cultivating the land in question. It is also the case of the petitioner that the present respondents – original defendants have tried to encroach upon the land in question and hence the petitioner instituted Regular Civil Suit

No.20 of 2002 in the Court of learned Civil Judge (J.D.) Idar. The learned Civil Judge (J.D.) has granted interim relief by his order dated 16.9.2002 after hearing the parties and thereby allowed the Ex.5 application. Being aggrieved by the said order passed by the learned Civil Judge (J.D.) the present respondents filed C.F.O No.31 of 2002 before the learned Assistant Judge, Himmatnagar, who vide his order dated 1.4.2005 has quashed and set aside the order passed below application Ex.5 in Regular Civil Suit No.20 of 2002 and directed the parties to maintain status-quo till final disposal of the suit. It is this order which is under challenge.

5. Mr.M.A.Kharadi, learned advocate appearing for the petitioner has submitted that the petitioner is in possession of suit land and in support of his submission he has produced relevant revenue entries. As against this

Mr.J.V.Japee, learned advocate appearing for the respondents submitted that the respondents are in possession of the suit land for the last more than 50 years and voluminous evidence have been produced in form of affidavits, panchnama etc. He has further submitted that the order passed by the learned Assistant Judge is required to be confirmed.

6. After having heard the learned advocates for the respective parties and after having considered the impugned orders passed by the authorities below the Court is of the view that since the suit is still pending, to express any opinion on the subject matter will prejudice the case of the parties. The Court, therefore, without expressing any opinion, directs the learned Civil Judge (J.D.) Idar to expedite the hearing of the Regular Civil Suit No.20 of 2002 and dispose it of as expeditiously as possible,

preferably, on or before 30-6.2007. Till the suit is finally disposed of the ad-interim relief granted by this Court on 23.8.2005 would continue, whereby the order of the learned Assistant Judge was stayed and that of learned Civil Judge was restored.

7. It is made clear that the Court has not gone into the merits of the matter and hence while disposing of the suit the learned Civil Judge (J.D.) Idar shall pass the order after considering the evidence, oral as well as documentary without being influenced by any of the order passed at the interim stage.

8. Subject to the aforesaid direction and observation this petition is accordingly disposed of without any order as to costs.

(K. A. PUJ, J.)

kks